

**HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY**

WRIT APPEAL No. 151 OF 2007

Between:

P. Pushpalatha & others

.... Appellants

AND

The Govt. of Andhra Pradesh,
Rep. by its Principal Secretary,
Municipal Administration,
Hyderabad & others

.....Respondents

:: J U D G M E N T ::

Counsel for the appellants : Shri S. Chandra Sekhar

Dated: 13.02.2007

Per G.S.SINGHVI, CJ

Having failed to persuade the learned Single Judge to issue a mandamus directing District Collector, Adilabad (respondent No.2) and Commissioner, Town Municipality, Adilabad (respondent No.3) to remove the alleged illegal construction raised by respondent Nos. 4 and 5 on the land earmarked for park/open space situated between Plot Nos. 17 and 18 at Bhumanna Dubba area of Shantinagar Colony, Adilabad Town, the appellants have preferred this appeal under Clause 15 of the Letters Patent.

Although the averments contained in the affidavit filed by appellant No.1 in the writ petition are rather obscure, on a careful scrutiny of the entire record, we are satisfied that the appellants had filed writ petition with the sole object of settling their personal scores with respondent Nos. 4 and 5 and the learned Single Judge did not commit any error by refusing to entertain their prayer.

In the affidavit filed by her, appellant No.1 - Smt. P. Pushpalatha averred that as per the layout plan of 1968, the open space measuring 70x60 feet lying between Plot Nos.17 and 18 was earmarked for park and the same was being used by residents of the locality. She further averred that respondent Nos.4 and 5 purchased the disputed piece of land on the basis of fictitious documents prepared by A.Naganna and Y.Vaman Reddy and started raising construction and that despite repeated notices, the authorities of the Adilabad Municipality did not take any action to stop the illegal construction.

In the reply affidavit filed by him, Shri D. Jagadeswar, Commissioner, Adilabad Municipality averred that the land on which respondent Nos. 4 and 5 are constructing houses is a private land and not municipal land earmarked for park. He further averred that respondent Nos. 4 and 5 were raising construction on the basis of the

permission accorded by the competent authority. This is evinced from paragraphs 3 to 6 of the affidavit of Shri D. Jagadeswar which are extracted below:

“3. It is respectfully submitted that in reply to para 2 of the affidavit, I submit that the petitioners statement is false and baseless. The land on which the respondent No.4 and 5 are constructing houses is a private land and it is not a Municipal land earmarked for park. The respondent No.4 and 5 are having registered documents vide Regd. no. 3299/03, dt.22.12.2003 containing (5) pages, in the name of Sri Y. Waman Reddy S/o Ramachander Reddy, 2) No.2901/2004, dt.7.7.2004 containing (8) pages in the name of Sri Laxminarayana S/o Linganna.

4. It is respectfully submitted in reply to para 3 of the affidavit, I submit that the petitioners may be put to strict proof regarding their residing in Shanthinagar Colony of Adilabad town. It is true that the Adilabad Municipality was the owner of the land at “Bheemanna Dubba” long back and the same land was allotted to the employees of the Municipality long back and the entire area is developed by constructing houses and there is no sanctioned layout plan for this “Bheemanna Dubba” area. Further, it is submitted that a layout plan was approved by the Director of Town and Country Planning, Andhra Pradesh, Hyderabad, for the “Bheemanna Dubba” area, assigning L.P.No.373/82, wherein the suit site is not shown or earmarked for park. As per sanctioned Master Plan of Adilabad Town the suit site is also not earmarked for park. As the suit site was vacant all these days, the children of the locality might have played there, the petitioners cannot take advantage of children playing on the petitioners vacant site.

5. It is respectfully submitted that in reply to para No.4 of the affidavit, I submit that, Sri Y. Waman Reddy and Laxminarayana are the owners of the plots by virtue of registered documents. This respondent has not allotted the plots to them but this respondent has accorded permissions for construction of houses vide BA. G1/106/260/2004, Dt.30.11.2004 and B.A.G12/134/288/2004, Dt. 7-1-2005 to Sri Laxminarayana S/o Linganna and Sri Y. Waman Reddy

S/o Ramachander Reddy. It is true that, after obtaining the permission they are constructing the houses at the suit site.

6. It is respectfully submitted that in reply to para 5 of the affidavit, I submit that, the construction is not illegal as this respondent has accorded permissions for construction of houses as stated in para No.4. The petitioners statement is incorrect and baseless. There are existing drains in front of the existing houses. The suit site is clear. The drain water is not accumulating. The petitioners have misguided the Hon'ble Court."

The learned Single Judge, after taking cognizance of the averments contained in paragraph 4 of the counter-affidavit of Shri D. Jagadeswar, dismissed the writ petition by observing that the petitioners had not produced any tangible evidence to prove that the land in dispute is earmarked for park.

Shri S. Chandrasekhar, learned counsel for the appellants made strenuous efforts to persuade us to read more than what has been pleaded in the affidavit of appellant No.1 and emphasized that in the absence of any categorical averment in the affidavit of Shri D. Jagadeswar that the land in question is not earmarked as an open space for the benefit of the residents of the colony, the Court should draw an inference that the land in dispute is municipal land over which respondent Nos.4 and 5 are illegally raising construction. Learned counsel submitted that the authorities of the municipality were duty-bound to produce the entire record relating to the land lying between Plot Nos.16 and 17 and the learned Single Judge should have drawn an adverse inference against them because the relevant records were not produced.

We have considered the submission of the learned counsel, but have not felt impressed. The primary burden to prove that the land in dispute is municipal land and is reserved for park or is earmarked as an open space was on the appellants, which they miserably failed to discharge. Smt. Pushpalatha did file rejoinder to the affidavit of Shri

D.Jagadeswar, but she did not produce any evidence to show that the land in dispute is reserved for park/open space. Therefore, we do not find any valid ground or justification to discard the averments contained in the affidavit of Shri D.Jagadeswar that the land is a private land belonging to respondent Nos. 4 and 5 and they raised construction after seeking permission from the competent authority of the municipality.

As a sequel to the above, we hold that the appellants have failed to make out a case for restraining respondent Nos.4 and 5 from raising construction at the disputed site or to direct respondent Nos.2 and 3 to demolish the construction raised by respondent Nos.4 and 5.

In the result, the appeal is dismissed. For filing a frivolous piece of litigation like the present appeal, the appellants shall pay costs of Rs.10,000/-, 50% of which shall be paid to respondent No.3 and the remaining 50% to the private respondents.

W.A.M.P.No.254 of 2007 filed by the appellants for impleadment of Shri Yeleti Wamana Reddy as party respondent is disposed of as infructuous.

G.S.SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

13.02.2007

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